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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Changes to the Board of	)	
Directors of the National Exchange	)	CC Docket No. 97-21
Carrier Association, Inc.	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY TO THE OPPOSITION
TO THE PETITIONS FOR RECONSIDERATION

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell ("Petitioners") file this Reply to the Opposition ("Opposition") filed by MCI Telecommunications Corporation ("MCI") against both the Petitioners' "Joint Petition for Reconsideration" ("Joint Petition") and Bell Atlantic's "Petition for Partial Reconsideration" ("Petition") filed with respect to the Commission's Report and Order and Second Order on Reconsideration, FCC 97-253 ("Order"). MCI is the only party contesting the Petitioners' and Bell Atlantic's reconsideration position -- namely that, contrary to the Order and Form 457, inside wire revenues (and any other non-telecommunications revenues) are not properly included in the federal universal service contribution calculation. Inasmuch as MCI's Opposition is neither factually accurate nor legally correct, the Commission should modify the Order and Form 457 to exclude those revenues.

The Commission Had Previously Decided To Exclude Inside Wire Revenues from the Universal Service Contribution Calculation

MCI frames the Petitioners' position as asking "the Commission to reconsider its decision to retain inside wire revenues as part of the contribution base for federal universal service support." Opposition, p. 1 (emphasis added). Actually, the Joint Petition questioned the change

from a Commission decision rendered in the Universal Service Order[1] but modified without any comment or explanation in the Order. As demonstrated in the Joint Petition and amplified by Ameritech,[2] the Commission had clearly and properly decided in the Universal Service Order to exclude inside wire revenues. MCI's assertion that "the Commission never decided to exclude inside wire revenues" is just wrong. MCI Opposition, pp. 2-4.

Inside Wire Activities are Not Telecommunications Services, "Incidental" or Otherwise

As to MCI's assertion that inside wire services are "incidental" telecommunications services, MCI wholly fails to address the statutory definitions of "telecommunications" or "telecommunications service." The simple application of the plain statutory language declares that inside wire activities (*e.g.*, sales, installation, maintenance) are not "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43) (definition of "telecommunications"). Obviously, if inside wire activities do not constitute "telecommunications," they cannot then be "the offering of telecommunications for a fee directly to the public." 47 U.S.C. § 153(46) (definition of "telecommunications service"). If any further support beyond the common sense and literal application of those definitions is necessary to refute MCI's position, the Joint Petition, Bell Atlantic's Petition, and pleadings filed in support are replete with citations to Commission decisions acknowledging that inside wire activities are not

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (May 8, 1997) ("Universal Service Order").

[2] *See* "Comments of Ameritech in Response to Petitions for Reconsideration," p. 2 (filed October 2, 1997) (quoting the Universal Service Order, ¶ 597).

"telecommunications" or "telecommunications services." *See* Joint Petition, pp. 2-4; Bell Atlantic's Petition, pp. 2, 3; "Comments of Ameritech In Response to Petitions for Reconsideration," p. 2. There simply can be no doubt about the issue.

MCI nevertheless attempts to construct an argument using Escher's methods. First, MCI misreads Form 457 in a futile attempt to bolster a proposition that "the facility upon which service is provided" does not need to be owned by a carrier "to be considered a telecommunications service." MCI Opposition, p. 2. First, MCI incorrectly claims that revenues from collocated facilities are to be included in the contribution calculation. Id. Those revenues are specifically directed to be included on Line 26 of the Form,[3] which is located within the block labeled "Revenue from Other Contributors." In other words, those revenues are acknowledged as not being "end user revenues" and thus are excluded from the contribution calculation. Pole attachment revenues are similarly recorded and treated, having been derived from other carriers and cable operators pursuant to 47 U.S.C. § 224 and thus are neither "end user revenues" nor, more to the point, "telecommunications" or "telecommunications services."[4] In fact, the

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[3] *See* "Universal Service Worksheet," FCC Form 457, Appendix A, Section II, Subsection D. 1., p. 12 ("Line (26) should include charges for physical collocation of equipment pursuant to 47 U.S.C. § 251(c)(6).").

[4] *See* In re: California Water and Telephone Co., 64 F.C.C.2d 753 (1977), where the FCC concluded after "careful review" that pole attachments and conduit leases did not constitute "communication by wire or radio":

> [t]his is not a situation where the pole owner is providing a communications service, such as channel service, to a cable operator. . . . Here the service provided is simply rental of available pole or conduit space, and the pole owners are not themselves involved in cable television transmission at all. Nor do they have any interest in insuring proper transmission or delivery of the signals. . . . The fact that cable operators have found in-place facilities convenient or even necessary for their businesses is not sufficient basis for finding that the leasing of those facilities is wire

Commission's rules already define pole attachment revenues as "Rent revenue" and not "End user revenue."[5]

The assertion that incumbent local exchange carriers ("LECs") "provide the service of maintaining the telecommunications facilities of another" is equally inaccurate even if it were relevant. Id. An incumbent LEC has no general obligation or responsibility for maintaining the collocator's equipment,[6] nor another's facilities attached to the LEC's poles. But even if an incumbent LEC does agree to provide maintenance services, such an agreement would not transform non-telecommunications activities into "telecommunications" and the associated revenues into "revenues derived from end users for telecommunications or telecommunications services." Universal Service Order, ¶ 851.

MCI's footnote discussing *Detariffing the Installation and Maintenance of Inside Wiring*, CC Docket No. 79-105, 1 FCC Rcd 1190 (1986) is obtuse. MCI Opposition, p. 3 n.4. Petitioners and others have correctly cited that Memorandum Opinion and Order as clear support for the proposition that inside wire activities are not telecommunications services. Nothing in that Memorandum Opinion and Order supports MCI's claim that the Commission concluded that

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> or radio communications. If such were the case, we might be called upon to regulate access and charges for use of public and private roads and rights of way essential for the laying of wire, or even access and rents for antenna sites.

64 F.C.C.2d at 758, 759. The fact that the Commission was provided such authority by the Pole Attachment Act of 1978 did nothing to change the non-telecommunications nature of providing space on poles and in conduit. *See* 47 U.S.C. § 153(43), (46).

[5] 47 C.F.R. §§ 32.5240(a) and 32.5081, respectively.

[6] The Petitioners assume that MCI is speaking exclusively of physically collocated equipment. In virtual collocation arrangements, the providing incumbent LEC does own the interconnection equipment and they are part of the LEC's network.

inside wire activities were "telecommunications services, even though they were not common carrier services." Opposition, p. 3 n.4. This is not surprising given that "telecommunications service" was not defined until the 1996 Act.[7] However, the Commission clearly determined that such activities are not "common carrier communications services" (1 FCC Rcd 1190, 1192 ¶ 16), and there is nothing in the 1996 Act that even remotely suggests that "telecommunications service" extends to encompass inside wire activities.

MCI's attempt to explain away the Commission's clear statement in the Universal Service Order that inside wire does not constitute "telecommunications" is nonsensical. The Commission stated that

> We find that, as discussed above, the Act permits universal service support for an expanded range of services beyond telecommunications services. Specifically, we include [] the installation and maintenance of internal connections . . .

Universal Service Order, ¶ 451 (emphasis added). MCI attempts to read "beyond" as somehow referring to the word "services" immediately preceding "beyond," and not to the object of the prepositional phrase that "beyond" creates. Unless a new form of English was created and used by the Commission in this instance, "telecommunications services" is the object of the prepositional phrase "beyond telecommunications services." Given the common meaning of "beyond,"[8] the Commission has clearly indicated its agreement that inside wire is outside of the definition of "telecommunications services."

MCI's citation to other paragraphs of the Universal Service Order do not even minimally

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[7] Telecommunications Act of 1996, Pub. L. No. 104-104; 110 Stat. 56 (1996) ("1996 Act").

[8] Webster's Third New International Dictionary (unabridged ed. 1981) defines "beyond" as "out of the reach or sphere of."

bolster any of MCI's arguments. First, the Commission's discussion in paragraph 451 regarding inside wire leasing as opposed to purchasing was part of its answer and justification in rejecting the argument that inside wire was a "good," not a "service." Based upon that conclusion, the Commission determined that "internal connections" were "services" -- but not "telecommunications services" -- that could be supported under 47 U.S.C. § 254(h)(1)(B). Indeed, if the Commission had determined that inside wire was a telecommunication service, that entire discussion would never have taken place.

The sentence quoted by MCI from paragraph 459 of the Universal Service Order was the Commission's way of attempting to further define "internal connections" for implementation purposes, and has absolutely nothing to say on the fact that the Commission had determined that inside wire was not a "telecommunications service." Reciting the essential definition of inside wire (*e.g.*, provides a transmission path) does not affect the non-existent merit of MCI's argument in the least. MCI Opposition, p. 4.

Finally, if the Commission agrees with MCI and determines that inside wire and internal connections constitute "telecommunications" or "telecommunications service," the Commission must of course modify Form 457 and the Order as necessary in order to require any provider of inside wire and internal connections (and conceivably any entity that maintains the facilities of another) to contribute to the federal universal service fund. MCI's discussion of the *de minimis* exception with respect to such entities is irrelevant. MCI Opposition, p. 5. As the Commission has made clear, no contributor or category of contributor is presumed to fall within that exception but rather each contributor must perform the necessary calculations and retain them to prove the

application of the exception.[9] Any other treatment would violate the "equitable and nondiscriminatory" requirement of 47 U.S.C. § 254(d).

Including Inside Wire Revenues Would Be Discriminatory

MCI utterly fails to seriously address Petitioners' demonstration that the inclusion of inside wire revenues would be discriminatory. MCI instead limits its opposition to arguing with the Petitioners' observation that, under Form 457, the revenues of an interstate carrier's affiliate engaged in inside wire activities would not be included in the contribution calculation, but that the same revenues booked by an interstate carrier would be included. MCI attempts to refute that observation by using part of a single sentence in the instructions accompanying Form 457 for the proposition that affiliate revenues are indeed to be reported on Form 457. MCI again misreads.

As MCI itself acknowledges, MCI Opposition, p. 4, only entities providing interstate telecommunications can be required to contribute to the federal universal service fund. *See* 47 U.S.C. § 254(d). An entity that does not provide "interstate telecommunications" cannot as a matter of law be required to contribute to the federal universal service fund. As demonstrated, inside wire activities do not constitute "telecommunications" or "telecommunications services," interstate or otherwise. Thus, for example, independent electricians who sell, install, and maintain inside wire cannot be included in the base of contributors. An affiliate of an interstate carrier which is not itself engaged in "interstate telecommunications" is similarly excluded from contributing to the fund; there is no "carrier-affiliation" exception to the plain language of Section

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[9] *See* "Universal Service Worksheet," FCC Form 457, Appendix A, Section II, Subsection A, p. 4 ("Contributors exempt from filing and contributing because of *de minimis* revenues must retain the preceding [completed] worksheet and make it available to the Commission or to the Universal Service Administrator upon request.").

254(d).

Petitioners do not believe that Form 457 indicates a contrary decision by the Commission. *See* "Universal Service Worksheet," FCC Form 457, Appendix A, Section II, Subsection A. It is within that "Who Must File" subsection that MCI pulls its partial sentence. Although not entirely clear, the quoted language seems to be an attempt to define further the non-carrier entities that provide interstate telecommunications which are required to file a completed Form 457. The Commission had already discussed which interstate carriers had to file. Petitioners do not read the phrase "affiliate provides interstate telecommunications" either as requiring entities that do not provide "interstate telecommunications" to file and contribute (regardless of whether or not affiliated with another contributor), or as requiring the inclusion of non-telecommunications revenues generated by a non-filing affiliate to be included in a filer's completed Form 457. Such a reading would be inconsistent with the explicit instructions of Form 457, as well as the statute. *See, e.g.*, "Universal Service Worksheet," FCC Form 457, Appendix A, Section II, Subsection A ("Each legal entity that provides interstate telecommunications service must file separately.") (emphasis in original). To the extent that Petitioners have misunderstood and the Order and Form 457 require such reporting, the Commission has acted contrary to law and must reconsider its decision.

Conclusion

The Commission should reject MCI's Opposition as ungrounded and unsupported by fact or law, and modify the Order and Form 457 as requested.

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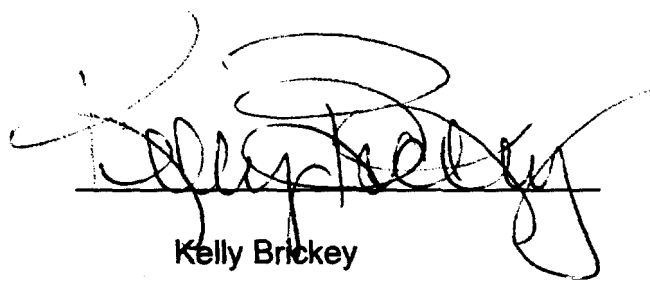
October 14, 1997

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Reply to the Opposition to the Petitions for Reconsideration", have been served on October 14, 1997, to the Parties of Record.



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